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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,535	03/26/2001	Hector Franco	HFRANCO.001A	6849

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EXAMINER

POND, ROBERT M

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/817,535

Applicant(s)

FRANCO, HECTOR

Examiner

Robert M. Pond

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-14 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-14, and 16-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The Applicant amended Claims 7, 16, 18, and 19. All pending claims (1-4, 6-14, and 16-19) were examined in this final office action necessitated by amendment.

Response to Arguments

Rejection under 35 USC 103

Applicant's arguments filed 18 December 2004 have been fully considered but they are not persuasive.

The Applicant is looking for the specific word "association." The previous office action states that there is an association and then cites excerpts from Yamada that clearly teach the association. The consumer orders products online and must show proof of identification in order to take possession. Yamada therefore teaches an association between the consumer and the products ordered by the consumer online.

Yamada teaches a consumer purchasing products from manufacturers and selecting a geographic location as a delivery destination (e.g. convenience store). It was noted in the previous office action that Yamada allows a customer to route one or more purchases to a single delivery destination (as noted by

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selecting the same place a plurality of times) and was referred to as "aggregating" on page 5, line 6 of the office action.

Yamada teaches the consumer controlling aggregation to a pre-determined delivery destination (of a network of delivery destinations) convenient to the consumer as noted above. Markowicz designated as Netship, teaches delivering online consumer purchases directly to consumers from centralized locations and further teaches Netship using a network of inventory locations geographically distributed across the country referred to as virtual warehouses. Netship teaches these virtual warehouses allowing merchants to preposition merchandise closer to the consumer for pickup or delivery, and further teaches bundling shipments at the virtual warehouse for customer pickup or delivery (please note: the Examiner clarified this in the previous office action). Teaching the method of geographically distributed locations using store locations serving as aggregation locations for purchased products is the pertinent issue.

Official Notice-Claim 3

The Applicant did not traverse the examiner's assertion regarding ordinary skill in the art in Claim 3. The common knowledge or well-known in the art statement is taken to be admitted prior art because the Applicant failed to traverse or adequately traverse the examiner's assertion of official notice (MPEP 2144.03(C)).

Official Notice-Claim 19

The Applicant did not traverse the examiner's taking of official notice regarding fulfillment center facilities. The common knowledge or well-known in the art statement is taken to be admitted prior art because the Applicant failed to traverse or adequately traverse the examiner's assertion of official notice (MPEP 2144.03(C)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 1, 2, 4, 6-14, and 16-18 are rejected under 35 USC 103(a) as being unpatentable over Yamada (Paper #20041104, patent number 6,336,100), in view of Netship (Paper #20041104, PTO-892, Item: U).**

Yamada teaches an online shopping system and method connecting a plurality of online consumer terminals to a plurality of virtual stores via the Internet as a communication system (see at least abstract; Fig. 1 (1, 2, 3, 9); col. 1, lines 4-15; col. 2, lines 10-24). Yamada teaches aggregating consumer purchases at a geographic location designated by the consumer, the location

being the consumer's house or other designated location. Yamada further teaches:

- Associating a plurality of items ordered by the consumer from a plurality of merchants: on a computer, consumers order items from a plurality of virtual stores; orders products and selects a plurality of places (please note examiner's interpretation: consumer can select the same place multiple times as a plurality of places) (see at least col. 2, lines 19-21; col. 4, lines 60-65).
- Receiving the associated items at a single geographic location: designated single geographic location receives delivery of consumer order(s) (e.g. consumer order delivered to designated convenience store) (see at least col. 3, lines 34-37).
- Presenting to the consumer a set of at least one predetermined geographic location from which the consumer is prompted to make a selection: consumer makes a station change from a predetermined list of geographic locations (see at least Figs 4-6); col. 4, lines 31—41).
- Merchant receives instructions: merchant is aware of consumer selected location (see at least Fig. 1 (1, 4-9); col. 2, line 10 through col. 3, line 37).
- Receiving a notification of receiving a delivery: system provides notification of delivery to specified location to the consumer (see at least col. 3, lines 55-57).

- Providing identification: consumer provides ID information (see at least col. 3, line 66 through col. 4, line3).
- Providing a consumer date and time: (see col. 3, lines 15-18).

Yamada teaches all the above as noted under the 103(a) rejection and teaches a) an order fulfillment system delivering items purchased via an electronic commerce site to a delivery location that receives and stores the consumer's orders for pick-up, b) aggregating a consumer's order at a retailer location and delivering directly to a consumer or to a store location, and c) using convenience stores as alternative delivery locations for consumer pick-up convenience, but does not disclose the local store as an aggregation facility. Netship teaches decentralizing the online market by implementing distributed warehousing using regional or local inventory locations. Netship teaches using fulfillment houses for pick, pack and ship services, and shipping in bulk quantities using trucks. Netship teaches problems with tracking individual consumer orders and higher cost associated with shipping an individual order from a central facility. Netship teaches shipping from regional facilities, and further teaches Netship's virtual warehouse comprising a network of inventory locations using Parcel Plus store locations, using Parcel Plus locations as virtual warehouses and providing pick-and pack operations (please note examiner's interpretation: Parcel Plus is serving as an aggregator) (U: see at least pages 1-2). Therefore it would have been

obvious to one of ordinary skill in the art at time of the invention to modify the method of Yamada to disclose store locations serving as regional or local aggregators of goods purchased online as taught by NetShip, in order to provide consumer convenience and reduced fulfillment costs, and thereby attract consumers and online merchants to the service.

Yamada teaches all the above as noted under the 103(a) rejection and teaches a) the system providing fulfillment instructions, b) aggregating an online consumer's purchased items at a retailer location, a retailer transferring items to a home deliverer who then delivers directly to the consumer or to a consumer's alternate delivery location (e.g. a store location), and c) the alternate delivery location serving as a pick-up location for the consumer, but does not disclose the alternate delivery location delivering the aggregated items to the consumer. NetShip teaches all the above as noted under the 103(a) rejection and teaches a) merchants using a local store location to aggregate inventory (please note: referred to by Netship as "bundling" merchandise at the virtual warehouse) and delivering the consumer's goods directly from the aggregator's location using one-day ground service or allowing the consumer to pick-up goods at the aggregator's location (U: see at least page 2). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Yamada to deliver aggregated items from a local store to the consumer as taught by Netship, in

order to provide additional consumer convenience, and thereby attract consumers to the service desiring either pick-up or local delivery.

- 2. Claim 3 is rejected under 35 USC 103(a) as being unpatentable over Yamada (Paper #20041104, patent number 6,336,100) and Netship (Paper #20041104, PTO-892, Item: U), as applied to Claim 1, further in view of Official Notice (Paper #20041104, as admitted prior art, regarding ordinary skill in the art).**

Yamada and Netship teach all the above as noted under the 103(a) rejection and teach a) providing consumer shopping convenience by offering alternative delivery locations for online consumers, c) the server transmitting pending delivery information to the manufacturer or wholesaler, the retailer, and the merchandise management center (see at least col. 3, lines 13-18), c) the store location notifying the server after receiving a consumer's delivered order, and d) the system notifying the consumer of a delivered item to a local store ready for consumer pick-up (please note examiner's interpretation: also a consumer convenience) (see at least col. 3, lines 5-60), but do not disclose the consumer receiving a notification of a pending delivery to the location. It would have been obvious to one of ordinary skill in the art at time of the invention to disclose the consumer receiving a notification of a pending delivery to the location, since one of ordinary skill in the art would ascertain pending delivery notification to the

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customer's selected location as providing an additional consumer notification convenience, and thereby attract consumers to the service.

- 3. Claim 19 is rejected under 35 USC 103(a) as being unpatentable over Yamada (patent number 6,336,100) and Netship (PTO-892, Item: U), as applied to Claim 1, further in view of Official Notice (Paper #20041104, as admitted prior art, regarding fulfillment center facilities).**

Yamada and Netship teach all the above as noted under the 103(a) rejection and teach a) locally aggregating purchased items and inventoried items in store locations, b) trucks used to delivered items, and c) pick, pack, and shipping of items, but do not disclose detail of the local store's facilities. This examiner takes the position that it is old and well-known in the arts for fulfillment centers to have loading/un-loading docks for trucks to aid in efficient transfer to/from the delivery truck. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to disclose loading/un-loading docks as taught by Official Notice, in order to efficiently transfer items to/from delivery trucks.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

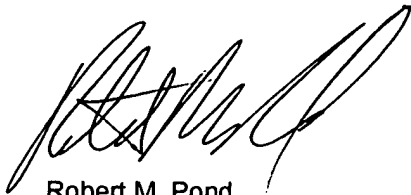
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 703-605-4253. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'R. M. Pond', is written over the printed name.

Robert M. Pond
Primary Examiner
March 4, 2005